

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JASON DUNKELBERGER, Plaintiff, vs. JOHN STORY, STATE MACHINE SHOP SUPERVISOR AT SD STATE PENITENTIARY; IN HIS INDIVIDUAL AND OFFICAL CAPACITY; MARCUS DITSWORTH, STATE, TEMP. SUPERVISOR AT SDSP MACHINE SHOP; IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; AND JOHN DOES, UNKNOWN EMPLOYEES OR OTHERS TO BE KNOWN; IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES; Defendants.	4:20-CV-04086-LLP ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY AN INTIAL PARTIAL FILING FEE
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Plaintiff, Jason Dunkelberger, filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. Dunkelberger moves for leave to proceed in forma pauperis and provided the Court with his prisoner trust account report. Docs. 2, 4. Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “ ‘[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Dunkelberger has reported an average monthly balance for the past six months to his prisoner trust account of \$32.50, and an average monthly deposit of \$152.42. Doc. 4. Based on this information, the court grants Dunkelberger leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$30.48 (20 percent of his average monthly deposit). Dunkelberger must pay the initial partial filing fee of **\$30.48 by August 3, 2020**. Failure to pay the filing fee by August 3, 2020, will result in dismissal without prejudice of Dunkelberger's Complaint.

Thus, it is ORDERED:

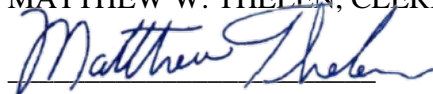
1. That Dunkelberger's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

Dunkelberger will make a payment of **\$30.48 by August 3, 2020**, made payable to the Clerk, U.S. District Court. If Dunkelberger does not pay the initial partial filing fee by August 3, 2020, his Complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after Dunkelberger pays his initial partial filing fee.

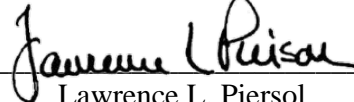
2. That the institution having custody of Dunkelberger is directed that whenever the amount in Dunkelberger's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Dunkelberger's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED July 7, 2020.

ATTEST:
MATTHEW W. THELEN, CLERK



BY THE COURT:



Lawrence L. Piersol
United States District Judge